

WATER SYSTEM OPERATION AND TRANSFER AGREEMENT

BOTHA, VIRGINIA

THIS WATER SYSTEM OPERATION AND TRANSFER AGREEMENT, made this 22nd day of October, 2002, by and between the **BOARD OF SUPERVISORS OF FAUQUIER COUNTY**, (hereinafter called the "County"), and the **FAUQUIER COUNTY WATER AND SANITATION AUTHORITY**, (hereinafter called the "Authority"), recites and provides as follows:

RECITALS:

WHEREAS, the County will own the soon-to-be constructed Botha Water System, providing public water services to the Botha Village subdivision in the unincorporated village of Botha, Virginia; and

WHEREAS, the Authority is willing to operate and maintain the Botha Water System on behalf of the County in exchange for the revenues received from the Botha Water System customers and subject to the terms of this Agreement; and

WHEREAS, the County and the Authority wish to set forth the conditions upon which ownership of the Botha Water System will be transferred to the Authority; and

WHEREAS, the County and the Authority wish to memorialize in writing the terms of their agreement as it relates to the operation, maintenance, capital improvements and transfer of the Botha Water System.

This Agreement is entered into pursuant to authority granted to the parties under §15.2-1300, §15.2-2111 and §15.2-5114 of the *Code of Virginia*, 1950, as amended.

AGREEMENT:

NOW THEREFORE, in consideration of the promises contained herein, and intending to be legally bound, the County and the Authority hereby covenant and agree as follows:

A-1. The System

The Botha Water System consists of, but is not limited to, the requisite facilities, components and related real property interests necessary for the production and distribution of water to the landowners of properties in Botha Village subdivision in the unincorporated village of Botha and as more particularly described on a set of construction plans entitled "Water System Construction Plans Botha Subdivision" dated 20 October 2001 and as prepared by the ENSAT Corporation of Culpeper, Virginia, hereby incorporated as Exhibit 1. The Botha Water System contains both public and private segments, generally described as follows:

1. Wells, well pumps, control systems, a water storage tank, valves, water lines and water meters, which are owned by the County as the public segment of the Botha Water System (hereinafter called the "System").
2. Individual water laterals/service lines, valves and plumbing fixtures, which are between the public facilities and individual properties and homes, are owned by individual property owners as the private segment of the Botha Water System and are not considered to be a segment of what is hereinafter called the System.

A-2. Operations and Maintenance

1. **Compensation** – during the Term of this Agreement, the Authority shall operate and maintain the System on behalf of the County in exchange for the revenues collected from the System's customers.
2. **Operation of the System** – System operations shall be in conformance with all applicable federal, state and local laws and regulations governing the operation of water systems of the size and nature of the System. System operations shall be conducted in the most efficient and economical manner practicable for a water system of the size and nature of the System. The Authority shall promulgate for consideration by the County all policies necessary for the economic, efficient and proper operation and maintenance of the System.
3. **Maintenance of the System** – during the Term of this Agreement, the Authority shall maintain the System on behalf of the County, in proper working order and in conformance with all applicable federal, state and local laws and regulations governing the operation of water systems of the size and nature of the System.
4. **System Remediation, Improvements and/or Repairs** - should the System fail to produce adequate water quality (such as exceeding the primary contaminant levels for nitrates) or adequate water quantity (such as experiencing a well or well pump failure) the Authority will so notify the County in writing with its recommendations for remediation, improvements and/or repairs. The costs of all remediation, improvements and/or repair shall be funded by the County.
5. **Rates** – the County shall adopt the Authority's Schedule of Rates, Fees and Other Charges and as amended from time to time, which rates, fees and other charges shall apply to all customers of the System.

A-3. Transfer of System

Provided (i) all remediation and capital improvement projects required under this Agreement have been funded and completed, and (ii) the System is in compliance with all applicable laws, regulations, permits and approvals, the County shall have the right to transfer title to and ownership of the System to the Authority, and the Authority covenants and agrees that it will accept title to and ownership of the System upon the satisfaction of any of the following conditions:

1. Upon the expiration of the initial five (5) year term of this Agreement, the level of nitrates in the System well water has not exceeded the primary maximum contaminant level for safe drinking water for public water systems as established by the Virginia Department of Health, and:
 - i. The average of the results of all Nitrate samples taken after the effective date of this Agreement is less than five (5) parts per million, or;
 - ii. The average of the results of all Nitrate samples taken after the effective date of this Agreement is more than five (5) parts per million and said average is not increasing, and further as certified by a professional hydrogeologist acceptable to the Authority, that it is not probable that the System will exceed the then mandated primary maximum contaminant levels for nitrates; or
2. The construction and installation by the County of a new water source mutually agreeable to the County and the Authority; or
3. The execution of a nitrate remediation agreement mutually agreeable to the County and the Authority.

Any and all costs associated with the transfer of the System to the Authority shall be incurred by the County at its sole expense.

A-4. Acceptance of System Customers

The County shall accept customers into its System as regular customers only under the following conditions:

1. Water capacity must be available in the System.
2. All applicable fees are paid in full.

A-5. Insurance

1. Insurance Coverage Amounts – the County and the Authority shall maintain insurance coverage in the following minimum amounts throughout the term of this Agreement:

	<u>Type of Policy</u>	<u>Limits of Liability</u>
A.	General Liability	\$1,000,000 Each Occurrence and Aggregate
B.	Standard Workers' Compensation Employer's Liability	Statutory \$500,000

C. Automobile Liability \$1,000,000 Combined Single
Limit (Bodily Injury and Property Damage)

2. Certificates of Insurance. - Certificates of Insurance evidencing the above-required insurance coverage shall be provided by each of the parties within thirty (30) days of the commencement of any services under this Agreement. Such Certificates of Insurance shall provide for at least forty-five (45) days notice to the Authority of cancellation, material change, or lapse of coverage and shall certify that all policies meet the requirements of this Article in all respects. The insurance coverage specified herein shall constitute minimum requirements and the Authority shall be included as an additional insured on the policies described in Section 1.A and 1.C above.

A-6. Dates and Terms of Agreement

1. This Agreement shall be for a term of five (5) years commencing on the date on which this Agreement has been signed by both parties, and shall be automatically renewed for successive five (5) year terms, unless either party gives the other party written prior notice of its intent to terminate this Agreement at the expiration of the term. Prior notice must be given at least one hundred and eighty (180) days prior to the expiration of any current term.
2. Neither the Authority, nor the County, shall be responsible for any delay caused by acts of God, war, strikes, fires or natural calamities.

A-7. Default

If the County or the Authority shall fail or neglect to keep and perform each and every one of the covenants, conditions and agreements contained herein, and such failure or neglect is not remedied within thirty (30) days (or such longer period as may be reasonably required to correct such failure or neglect with exercise of due diligence) after written notice from either the Authority or the County specifying such failure or neglect, then either the Authority or the County may pursue any legal remedies available to them. No default as herein provided shall be deemed complete, unless at the time the Authority or County seeks to take any action based upon such default, the same shall remain uncured. A default shall not exist regarding any act required to be performed or not performed hereunder that is not completed within the time specified herein but is commenced within such time and is diligently pursued thereafter.

A-8. Appropriation

The obligations of the County and the Authority under this Agreement are expressly made subject to the appropriation of funds necessary to carry out the terms of this Agreement. Upon the failure to appropriate funds necessary to fulfill the obligations imposed herein, this Agreement shall be terminated upon the date of exhaustion of the funds which have been appropriated and neither party shall have further obligations to the other under this Agreement unless such obligations expressly survive termination of this Agreement.

A-9. Termination

1. **For Cause** – this Agreement may be terminated by either party, upon the failure of the other party to comply with any obligation imposed upon it under this Agreement, provided however, that prior to termination pursuant to the terms of this section, the party in default shall be given written notice of the other party's intent to terminate this Agreement and shall have thirty (30) days from the receipt of the notice to cure the default in conformance with Paragraph A-7 herein.
2. **Failure to Appropriate** – the failure of the County or the Authority to appropriate funds necessary for the completion of any obligation under this Agreement shall act to automatically terminate this Agreement once the appropriated funds are fully expended.

A-10. Permits

1. **The County** shall be named as the Permittee in all permits, securing in its name all zoning, building, Virginia Department of Health and Department of Environmental Quality permits necessary for the installation, improvement, operation and maintenance of the System. The County shall be responsible for complying with the conditions of any such permits. Upon transfer of the System to the Authority, the County, at its sole cost, shall cause any permits that are required to be transferred to a new owner of the System to be transferred to the Authority.
2. **The Authority** shall secure on behalf of the County, and at the County's sole expense, all permits necessary to operate the System. The County shall cooperate fully with the Authority in the permit application process and shall execute any and all applications and documents necessary to obtain any permit required by federal, state or local law or regulation to operate the System.

A-11. Violations

The Authority shall immediately notify the County of any Notice of Violation or any regulatory action taken against the System by any federal, state or local regulatory agency. The Authority shall immediately prepare all necessary and proper plans to remediate the violation and shall present the plans to the County. The Authority shall take all actions authorized by the County to immediately abate any violation.

A-12. Notices

All notices hereunder shall be in writing, shall be given either manually or by mail and shall be deemed sufficiently given when actually received by the party to be notified or when mailed, if mailed by certified or registered mail, postage prepaid, addressed to the other party at his address set forth below. Any party may, by notice to the other parties given in the manner provided for herein, change his or its address for receiving such notices.

Address for notices to the County:

G. Robert Lee, County Administrator
Office of the County Administrator
Court and Office Building – Fourth Floor
40 Culpeper Street
Warrenton, VA 20186-3298

Address for notices to the Authority:

Barney E. Durrett, Jr., General Manager
Fauquier County Water and Sanitation Authority
P. O. Box 861646
Warrenton, VA 0187-1646

A-13. Governing Law; Venue

This Agreement shall be construed and performed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of law principles. Resolution of any outstanding claims, counterclaims, disputes and other matters arising out of or in connection with this Agreement shall be decided in a court of competent jurisdiction in the Commonwealth of Virginia.

A-14. Entire Agreement

This Agreement constitutes the entire agreement of the parties relating to its subject matter and supersedes all prior and contemporaneous agreements of the parties in connection herewith.

A-15. Cumulative Rights

The rights and remedies provided in this Agreement shall not be exclusive, but shall be cumulative and in addition to all other rights and remedies provided by applicable law, including but not limited to, statutory or common law indemnity, contribution, or other remedy at law or in equity.

A-16. Waiver not Continuing

The waiver by either party of any failure on the part of the other party to perform any of its obligations under this Agreement shall not be construed as a waiver of any future or continuing failure or failures, whether similar or dissimilar thereto.

A-17. Mutual Work Product

This Agreement results from negotiations between the parties. It is the intention of each of the parties that this Agreement is a mutual work product and that neither of the parties shall be considered to be responsible solely for the preparation of same. The parties

agree that no phrase or provision of this Agreement that is ultimately held to be ambiguous shall be construed against either of them.

A-18 Surviving Obligations

The representations, warranties and covenants of the parties shall continue after and survive, and be enforceable notwithstanding, the execution of this Agreement, the completion of the Services or the expiration or other termination of this Agreement.

A-19 Captions

The captions in this Agreement are for purposes of convenience only and form no substantive part of this Agreement. In no event shall they be deemed to limit or modify the text of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

COUNTY:

BOARD OF SUPERVISORS
OF FAUQUIER COUNTY

ATTEST:

_____ by: _____
Chairman

AUTHORITY:

FAUQUIER COUNTY WATER AND
SANITATION AUTHORITY

ATTEST:

_____ By: _____
Earl H.Douple, Jr., Chairperson

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